

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

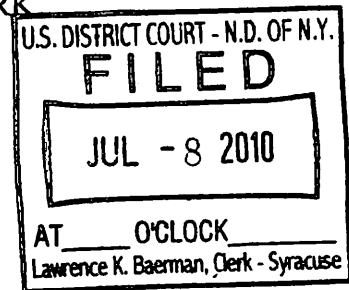
UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NEW YORK; the NEW YORK  
STATE BOARD OF ELECTIONS; STANLEY L.  
ZALEN, Co-Executive Director of the New York  
State Board of Elections; the UNIVERSITY  
OF THE STATE OF NEW YORK; the NEW  
YORK STATE EDUCATION DEPARTMENT;  
RICHARD P. MILLS, President of the University  
of the State of New York and Commissioner of  
the New York State Education Department; the  
STATE UNIVERSITY OF NEW YORK; and the  
CITY UNIVERSITY OF NEW YORK,

Defendants.



Civil ACTION No. 5:04-CV-00428-  
NAM-DEP

**CONSENT DECREE AND ORDER**

The United States of America ("United States") filed this action pursuant to Section 7 of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg-5, seeking a declaration that Disabled Student Service offices ("DSS" offices or sites) on State-operated campuses of the State University of New York ("SUNY"), all campuses of the City University of New York ("CUNY"), and all campuses of locally-sponsored community colleges which are part of the SUNY system and created pursuant to N.Y. Educ. Law § 6301 (referred to collectively as "community colleges"), must be designated as mandatory voter registration agencies ("MVRAs") and enjoining those entities to fulfill MVRA functions. In addition to designation of each appropriate DSS

office pursuant to Section 7 of the NVRA, the United States also sought a detailed remedial plan to ensure future compliance with the NVRA at each designated DSS office. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 1973gg-9.

On March 22, 2010, this Court issued a Memorandum Decision and Order granting the United States' Cross-Motion for Summary Judgment. This Court determined that, under NVRA Section 7(a)(2)(B), DSS offices at each campus within the SUNY and CUNY systems, as well as at community college campuses in the State of New York, should be designated as mandatory voter registration agencies. *See* Docket 104. The Court's Order did not mandate a remedial program; instead, it allowed the parties an opportunity to explore appropriate terms under which to remedy the violations found.

The parties, through counsel, have conferred and agreed to resolve the remedial phase of this action without further delay so that compliance with Section 7(a)(2)(B) of the NVRA can be effectuated by the start of the 2010-2011 academic year and ensured thereafter. Regarding SUNY and CUNY educational institutions, the parties have agreed to waive further hearings and stipulate to the provisions of this Consent Decree and Order ("Decree"). Regarding the applicability of this Decree to the locally-sponsored community colleges that are part of the SUNY system, the parties recognize that New York State, pursuant to Rule 8 of the Federal Rules of Appellate Procedure, may elect to exercise its right to seek appellate review of the Court's final judgment and may elect to move this Court to stay those portions of this Decree that apply to the community colleges. The United States reserves the right to oppose any motion to stay any portion of this Decree and to oppose as appropriate any effort to reverse this Court's Order on

appeal.

Accordingly, the parties have entered into this Decree as an appropriate resolution of this action and stipulate as follows:

1. Each SUNY, CUNY, and community college campus maintains one or more DSS offices.
2. Section 7(a)(2)(B) of the NVRA requires states to designate as voter registration agencies "all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities." 42 U.S.C. §1973gg-5(a)(2)(B). New York State shall effectuate this Court's determination that the statute requires that DSS offices at each SUNY, CUNY, and community college campus be designated as mandatory voter registration agencies. *See* Docket 104.

**Definitions**

3. For purposes of this Decree:
  - A. "Disabled Student Services offices" or "DSS office" or "DSS site" refers to those locations at each SUNY, CUNY, and community college campus (as defined in paragraphs 3(B), 3(C), and 3(D), below) where disabled students apply for reasonable accommodations for access to classes, facilities, programs, activities, events and services;
  - B. "SUNY campus(es)" refers to all state-operated campuses within the SUNY system as well as campuses that may be added at some future point;
  - C. "CUNY campus(es)" refers to all campuses which are part of the City University of New York as well as campuses that may be added at some future point;

D. "community college campus(es)" refers to campuses at locally-sponsored community colleges which are part of the SUNY system and created pursuant to N.Y. Educ. Law § 6301, as well as campuses that may be added at some future point;

E. "applying for services" refers to the process whereby SUNY or CUNY students request or apply to receive, or recertify for continued eligibility for, reasonable accommodations for access to classes, facilities, programs, activities, events and services at any SUNY, CUNY, and community college campus, or the submission of a change of address form to any such DSS office in connection with the receipt of such services;

F. "application data" refers to the number of applications for reasonable accommodations for access to classes, facilities, programs, activities, events and services, renewals/recertifications for these accommodations, and related change of address requests submitted by students and processed by DSS offices on SUNY, CUNY, and community college campuses each month;

G. "NVRA transactions" refers to the number of voter registration applications and declinations, including blanks, received by or processed by DSS offices on SUNY, CUNY, and community college campuses. The term "blanks" refers to agency-based voter registration forms provided to, but not completed by, applicants. Pursuant to 42 U.S.C. § 1973gg-5(a)(6)(B)(iii), such unsigned blanks shall be deemed to be declinations of the opportunity to register to vote;

H. "fall" refers to the period beginning in August and concluding in December of each academic year;

I. "spring " refers to the period beginning in January and concluding

in May of each academic year;

J. "low activity" refers to data reflecting a) application data which exceeds the number of NVRA transactions by 25% or more during an academic year, or b) a reduction by 25% or more in total NVRA transactions generated at a DSS office during the fall or spring time periods of one academic year versus total NVRA transactions generated at that site during the same fall or spring period in the prior academic year;

K. "SBOE data" refers to monthly NVRA transaction data sent to DSS offices at each SUNY, CUNY, and community college campus, by the New York State Board of Elections;

L. "employee start date" refers to the date an employee of a SUNY, CUNY, and community college campus assumes a position with NVRA responsibilities, whether as a new employee or through transfer or promotion;

M. "employees with NVRA responsibilities" refers to site coordinators, NVRA coordinators, staff responsible for interviewing students or distributing applications for DSS services or programs, staff responsible for compiling and transmitting site application data, and staff responsible for recording and transmitting site NVRA transaction data;

N. "technical assistance" refers to information concerning NVRA requirements and their implementation, including, but not limited to, the procedures for offering voter registration opportunities and for compiling, recording, transmitting and storing data; and

O. "SBOE Agency-Based Registration Transmittal form" refers to the

form provided by the New York State Board of Elections and completed by site coordinators setting forth voter application and declination data, as set forth in 9 N.Y.C.R.R. 6213.5(c).

Accordingly, it is hereby **ORDERED ADJUDGED and DECREED** that:

**Designation of Disabled Student Services Offices at SUNY and CUNY Campuses**

4. As soon as practicable after the effective date of this Decree, but no later than August 20, 2010, the State Board of Elections (“SBOE”) shall undertake reasonable measures necessary to ensure that all DSS offices at SUNY, CUNY, and community college campuses are designated as voter registration agencies in accordance with the NVRA. Specifically:

A. Within seven (7) business days of the effective date of this Decree, SUNY and CUNY shall provide to counsel for the New York State Board of Elections (“SBOE”) the name and address of each DSS office at each SUNY, CUNY, and community college campus;

B. Within seven (7) business days of receiving the information set forth in paragraph 4(A), above, the SBOE shall ensure that all DSS offices at SUNY, CUNY, and community college campuses are assigned site codes pursuant to 9 N.Y.C.R.R. 6213.5;

C. Within seven (7) business days of assigning site codes pursuant to paragraph 4(B), above, the SBOE shall undertake reasonable measures necessary to ensure that each local board of elections is prepared to receive and process voter registration applications received from each designated DSS office, including each newly designated DSS offices.

**Voter Registration Obligations at Disabled Student Services Offices**

5. As soon as practicable after the effective date of this Decree, but no later than August 20, 2010, SUNY, CUNY, and community college campuses shall undertake reasonable measures necessary to ensure that the designated DSS office at each campus:

A. Provides to each individual initially requesting or applying for services, recertifying or renewing eligibility for continued services, or changing his or her address at a DSS office an NVRA-compliant agency based voter registration form and/or declination form, and offers to provide to each such individual the same degree of assistance with regard to completing the voter registration form or declination form as is offered for the completion of any other forms provided by the DSS office, unless the applicant declines such assistance. Where the DSS office provides verbal assistance to an individual in completing any request or application or other forms as may be necessary to obtain services, continue eligibility for receiving services, or effect a change of address, or reviews any initial request or application for services or such other forms with the individual, the DSS must verbally offer such individuals the opportunity to register to vote and provide any necessary or requested assistance in completing the voter registration form or declination form;

B. Prominently posts notices in the DSS office advising applicants that they may register to vote at the office;

6. Within seven (7) business days of receiving the information set forth in paragraph 4(A), above, the SBOE shall provide all designated DSS offices with sufficient materials, including NVRA-compliant agency based voter registration forms and declination forms, transmittal forms, educational/training, promotional or such other

materials, necessary for the DSS office to function properly as a voter registration agency;

7. Within seven (7) business days of receiving SBOE materials referred to in paragraph 6, above, the Director of each DSS office, or an appropriate designee, at each SUNY, CUNY, and community college campus shall undertake reasonable measures to distribute SBOE educational/training materials to all DSS office employees with NVRA responsibilities;

8. Within seven (7) business days of receiving updated or revised materials from the SBOE, the Director of each DSS office, or an appropriate designee, at each SUNY, CUNY, and community college campus shall undertake reasonable measures to distribute such updated materials to all DSS office employees with NVRA responsibilities.

9. The SBOE shall undertake reasonable measures necessary to ensure that all employees with NVRA responsibilities at DSS offices at SUNY, CUNY, and community college campuses are offered appropriate NVRA training in accordance with paragraphs 12-13, below.

#### **NVRA Coordinators**

##### **NVRA Site Coordinators**

10. Within fourteen (14) business days of the effective date of this Decree, each SUNY, CUNY, and community college campus shall appoint an NVRA "site coordinator" for each DSS office. The site coordinator's responsibilities shall include:

A. Overseeing implementation of paragraphs 5, 7, and 8 of this Decree at the site coordinator's office;



- B. Recording, or supervising the recording of, the data on the SBOE Agency-Based Registration Transmittal form, and supervising the timely forwarding of that form to the appropriate local board of elections office;
- C. Maintaining, or supervising the maintenance of, the site's application data;
- D. Identifying and resolving NVRA implementation problems including, but not limited to, discrepancies appearing between application data and NVRA transaction data;
- E. Supervising the storage of declination forms for twenty-two (22) months;
- F. Supervising the monthly forwarding of application data and NVRA transaction data to the appropriate university-wide NVRA coordinator;
- G. Reporting in writing to the appropriate university-wide NVRA coordinator at the conclusion of each fall and spring time period, with a copy to counsel for the United States, regarding implementation of the NVRA including, but not limited to, evidence of low activity or any significant implementation problems at particular DSS offices, staff training needs, and recommendations for improvements or changes in NVRA registration services on a site coordinator's campus.

**SUNY and CUNY System-wide NVRA Coordinators**

11. Within thirty (30) business days of the effective date of this Decree, SUNY and CUNY shall each appoint a single system-wide NVRA coordinator for ensuring system-wide NVRA compliance at SUNY, CUNY, and community college campuses. The system-wide NVRA coordinator's responsibilities shall include:

- A. Receiving SBOE data and the DSS offices' monthly application data and reviewing those data following the close of each fall and spring time period to evaluate whether those data reflect low activity or implementation problems;
- B. Reviewing the reports and any attachments provided by the site coordinators;
- C. Determining the necessity for a corrective action plan and directing the implementation of any such plan to address problems, including evidence of low activity, at any DSS office no later than twenty-five (25) business days from the date such implementation problem is identified;
- D. Providing technical assistance to site coordinators as needed, and periodically providing reminders and updates concerning their NVRA responsibilities.

**NVRA Instruction or Training**

- 12. SUNY and CUNY system-wide NVRA coordinators and site coordinators will attend NVRA training conducted by the SBOE on the date offered by the SBOE as soon as practicable, at or near the start of the 2010-2011 academic year, but no later than September 30, 2010.
- 13. Coordinators beginning service with SUNY or CUNY after the start of the 2010-2011 academic year will attend NVRA training conducted by the SBOE no later than thirty-five (35) business days after their start date.
- 14. DSS site coordinators will provide NVRA training to employees with NVRA functions at the site coordinator's site as soon as practicable, but no later than twenty (20) business days after the site coordinator's SBOE training.
- 15. DSS site coordinators will provide NVRA training to new employees with

NVRA functions at the site coordinator's site as soon as practicable, but no later than twenty (20) business days after the new employee's start date.

**Miscellaneous provisions**

16. During the effective period of this Decree, the United States may request application and transaction data. The United States may also request copies of documents, including those reflecting application data and SBOE Agency-Based Registration Transmittal forms generated during that academic year by all designated campuses, reports, or other materials concerning implementation of the activities required by the NVRA and this Decree at designated campuses. Such requests shall be limited to twice a year.

17. Within thirty (30) days of receiving a request pursuant to paragraph 16, SUNY and CUNY shall send any information pursuant to this Decree by express delivery or electronically, to the following address:

Voting Section  
Civil Rights Division  
United States Department of Justice  
1800 G. Street, N.W., Room 7254-NWB  
Washington, D.C. 20006  
Facsimile: (202) 307-3961  
[richard.dellheim@usdoj.gov](mailto:richard.dellheim@usdoj.gov)  
[ernest.a.mcfarland@usdoj.gov](mailto:ernest.a.mcfarland@usdoj.gov)

18. At the earliest time practicable, but in any event no later than one year from the effective date of this Decree, each SUNY, CUNY, and community college campus shall ensure that any information in printed materials, such as brochures or student handbooks, that describes or provides information regarding campus programs and services for the disabled, includes information concerning voter registration opportunities at DSS offices.

19. At the earliest time practicable, but in any event no later than ninety (90) days from the effective date of this Decree, each SUNY, CUNY, and community college campus shall ensure that their respective websites, in a manner accessible to the disabled to the extent practicable, provide information regarding the availability of voter registration application forms at DSS offices and have a link or links to the voter registration information and voter registration application forms on the SBOE website.

**Effective Date and Termination of This Decree**

20. This Decree shall take effect upon approval by the United States District Court for the Northern District of New York.

21. This Decree shall terminate three years from its effective date, or such other time (but no sooner than two years from its effective date), upon an agreement of the parties or a determination by the Court, in accordance with the procedures in paragraphs 22-24 below, that New York State has achieved substantial compliance with the terms of this Decree. At such time New York State shall be immediately relieved of any obligations which exceed regular NVRA requirements.

22. To demonstrate that it has achieved substantial compliance with the Decree, New York State may file a report, with appropriate documentation, with the United States demonstrating that it has achieved substantial compliance with the Decree and has the intent and means to continue compliance with Section 7 of the NVRA.

23. After conferring with New York State, the United States, in its good faith discretion, will determine whether it concurs that New York State has achieved substantial compliance with this Decree. A conclusion of substantial compliance may not be unreasonably withheld. If the parties agree that substantial compliance has been

achieved, they shall file a joint motion with the Court to terminate the Decree.

24. If the United States determines that New York State has not achieved substantial compliance with this Decree, and if the State disputes that determination, New York State may file a motion with this Court to terminate the Decree.

A. New York State shall notify counsel for the United States of their intent to file such motion at least 45 calendar days prior to filing the motion. Failure to provide timely notice, or to obtain the United States' consent to a shorter interval, or to obtain leave of the Court to proceed upon a shorter interval, shall result in rejection of the application without consideration of its merits.

B. In such a proceeding to terminate this Decree prior to its expiration date, the burden of demonstrating substantial compliance rests with the State of New York based upon a preponderance of evidence.

C. If New York State's motion to terminate the Decree is granted, it shall be immediately relieved of any obligations thereunder which exceed regular NVRA requirements.

D. If New York State's motion to terminate the Decree is denied, New York State may submit another motion to terminate (upon 45 days' notice) one year from the date of any previous denial.

25. Following the expiration of this Decree, New York State shall remain responsible for ensuring compliance with the permanent requirements associated with designation under Section 7 of the NVRA, 42 U.S.C. §1973gg-5(a)(2)(B) at all SUNY, CUNY, and community college campuses.

26. The Court shall retain jurisdiction of this case to enter further relief or

such other orders as may be necessary for the effectuation of the terms of this Decree.

27. The terms and provisions of this Decree shall be equally applicable to all SUNY, CUNY, and community college campuses. The New York State Defendants may move under Fed. R. App. P. Rule 8 to stay that portion of this Decree that applies to the community colleges. No part of this Decree, including references to "community colleges that are part of the SUNY system," shall be construed as a concession by New York State upon any issue pertaining to locally-sponsored community colleges which may be raised on appeal.

Agreed to this 7th day of July, 2010:

For Plaintiff:

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*/s/ Richard Dellheim*

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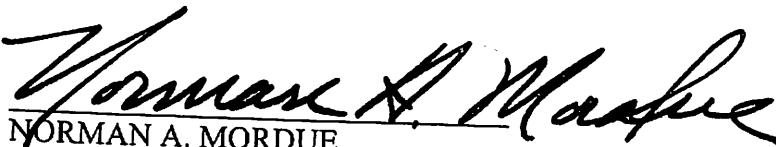
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Office of New York State Attorney  
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*/s/ Charles J. Quackenbush*

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ENTERED and ORDERED this 8th day of July, 2010.

  
NORMAN A. MORDUE  
Chief United States District Court Judge